

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 23, 2007

The Council of the City of San José convened in regular session at 9:30 a.m. in the City Hall Wing, Conference Room W133, at City Hall.

Present: Council Members - Campos, Chirco, Constant, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Cortese (Excused).

Vacant: - Districts 4 and 6.

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) West Hotel Partners v. City of San José, et al.; (2) In Re Weeden; (3) In Re Bergland; (4) Bates v. City of San José, et al.; (5) Fisher v. City of San José, et al. Chamber of Commerce Political Action Committee, et al. v. City of San José. et al. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (b) with respect to anticipated litigation with significant exposure in one (1) matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230.

By unanimous consent, Council recessed from the Closed Session at 10:50 a.m. and reconvened at 1:34 p.m. in the Council Chambers

Present: Council Members - Campos, Chirco, Cortese Constant, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - None.

Vacant: - Districts 4 and 6.

INVOCATION

Council Member Constant introduced Chaplin Dave Bridgen, San José Police Department, who led the invocation. (District 1)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 3.2 deferred to January 30, 2007. (9-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation recognizing the Alternate Work Program Team Members for their consistent contribution to the program. (Transportation)

Action: Mayor Reed and Director of Transportation James Helmer recognized and commended the Alternate Work Program Team Members for their outstanding contributions.

1.2 Presentation of the Waterford Crystal Bowl to the City of San José. The Waterford Crystal Bowl was presented to the City of San José on Thursday, September 9, 2006, in Dublin at the Mansion House, the official residence of the Lord Mayor. It was presented as a gesture of friendship and the deep bonds of our two cities at a reception and dinner hosted for the San José delegation that was in recognition of the 20th anniversary of the Sister City relationship. Dublin Lord Mayor Vincent Jackson presented the bowl to Council Member Williams and Council Member Pyle. (Williams/Pyle) (Rules Committee referral 1/10/07)

Action: Council Members Williams and Pyle presented a Waterford Crystal Bowl to the City of San José on behalf of Dublin Lord Mayor Vincent Jackson in recognition of the 20th anniversary of the “Sister City” relationship. Mayor Reed accepted the bowl on behalf of the City.

1.3 Presentation of a commendation to San José Police Department Southern Division Commander Captain Jack Farmer for his 30 years of protecting and serving the residents of San José. (Pyle/Chirco/Nguyen/Constant/Williams) (Rules Committee referral 1/10/07)

Action: Mayor Reed and Council Members Pyle, Chirco, Nguyen, Constant and Williams recognized and commended Commander Captain Jack Farmer for his 30 years of dedicated service to the City of San José residents.

- 1.4 Presentation of a commendation to Judy Santiago, Lurdes Rivera, Michael Gross and Richard Santos for continued service and dedication to the education of youth through the Alviso Santa Program. (Mayor)**
(Rules Committee referral 1/10/07)

Action: Mayor Reed recognized and commended Judy Santiago, Lurdes Rivera, Michael Gross and Richard Santos for their dedication to the youth of the “Alviso Santa Program”.

- 1.5 Presentation of a business appreciation commendation to Grainger Corporation in recognition of its corporate presence and operations in San José, the Capital of Silicon Valley. (Mayor)**
(Rules Committee referral 01/17/07)

Action: Deferred to March 27, 2007, per Mayor Reed.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Pyle, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0.)

- 2.1 Approval of minutes:**
- (a) Regular minutes of May 2, 2006**
 - (b) Regular minutes of May 9, 2006**
 - (c) Regular minutes of May 16, 2006**
 - (d) Minutes of Joint Council/San José Financing Authority of May 16, 2006**
 - (e) Regular minutes of May 23, 2006**

Action: Deferred to January 30, 2007 per the City Clerk.

- 2.2 (a) ORD. NO. 27913 – Rezoning certain real property situated on the south side of Story Road approximately 150 feet east of Adrian Way (2250 Story Road) to CP Commercial Pedestrian Zoning District. C06-096**
[Deferred from 12/05/06 – Item 2.2(f)]

Documents Filed: (1) Memorandum from Council Member Campos, dated December 1, 2006, requesting this item be heard on January 23, 2007. (2) Proof of Publication of Notice of Public Hearing, executed on November 21, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27913](#) was adopted. (9-0.)

- 2.2 (b) **ORD. NO. 27911** – Rezoning certain real property situated in the West Evergreen Strong Neighborhoods Initiative Area and located generally on both sides of Towers Lane, between Aborn Road and Amberly Lane, to R-1-8 Single-Family Residence District. CC06-058

Action: [Ordinance No. 27911](#) was adopted. (9-0.)

- (c) **ORD. NO. 27956** – Allowing the use of the City’s right of way by providers of video services under certain specified conditions.

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on January 16, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27956](#) was adopted. (9-0.)

- (d) **ORD. NO. 27958** – Rezoning certain real property situated at the southwest corner of Winchester Boulevard and Payne Avenue (1301 South Winchester) to A(PD) Planned Development Zoning District. PDC06-103

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on January 16, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27958](#) was adopted. (9-0.)

- (e) **ORD. NO. 27959** – Rezoning certain real property situated in the R-2 Two-Family Residence Zoning District (103 N. 26th Street) to A(PD) Planned Development Zoning District. PDC06-041

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on January 16, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27959](#) was adopted. (9-0.)

- (f) **ORD. NO. 27960** – Rezoning certain real property situated on the northwest corner of Aborn and King Roads (1685 Aborn Road) to A(PD) Planned Development Zoning District. PDC06-059

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on January 16, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27960](#) was adopted. (9-0.)

- 2.2 (g) **ORD. NO. 27961 – Rezoning certain real property situated at east side of San Felipe Road, approximately 700 feet northerly of Silver Creek Road to A(PD) Planned Development Zoning District to allow up to 22 single-family detached residences on a 17.98 gross acre site. PDC06-092**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on January 16, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27961](#) was adopted. (9-0.)

- 2.3 **Adoption of a resolution authorizing the City Attorney to negotiate and execute an eighth amendment to the agreement with Orrick, Herrington & Sutcliffe LLP for legal services related to debt secured by Airport revenues, increasing the compensation by \$70,000 for a total amount not to exceed \$170,000 and extending the term to December 31, 2007. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 11, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73601](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute an Eighth Amendment to the Legal Services Agreement with Orrick, Herrington & Sutcliffe LLP, increasing the Compensation by \$70,000 for a Total Amount Not To Exceed \$170,000 and Extending the Term to December 31, 2007", was adopted. (9-0.)

- 2.4 (a) **Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):**
- (1) **Increase the estimate for Earned Revenue by \$130,000.**
 - (2) **Establish an appropriation to the Public Works for the San Antonio Avenue Traffic Signal Modification Project (PSM #475) in the amount of \$62,000.**
 - (3) **Establish an appropriation to the Public Works for the OEA Audit Services Project (PSM #476) in the amount of \$68,000.**
- (b) **Adoption of a resolution making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the San Antonio Avenue Traffic Signal Modification Project as more specifically described in the memorandum from the Redevelopment Agency, dated November 13, 2006.**

CEQA: Exempt, File No. PP06-210. Council District 5. SNI: Mayfair. (City Manager's Office)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated December 19, 2006, recommending adoption of appropriation ordinance and funding sources resolution amendments and a resolution.

2.4 (Cont'd.)

Action: [Ordinance No. 27962](#); [Resolution No. 73602](#) and [Resolution No. 73603](#), entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (9-0.)

2.5 Adoption of the following Appropriation Ordinance Amendments in the Construction Tax Fund: Parks Purposes Council District 8:

(a) Increase the Council District 8 Public Art appropriation by \$22,000.

(b) Decrease the Ending Fund Balance by \$22,000.

CEQA: Exempt, PP06-068. Council District 8. (Economic Development/City Manager's Office)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko and Budget Director Larry Lisenbee, dated January 3, 2007, recommending adoption of appropriation ordinance.

Public Comment: Daniel McCall spoke off topic.

Action: Upon motion by Council Member Williams, seconded by Council Member Constant and carried unanimously, [Ordinance No. 27963](#) was adopted. (9-0.)

2.6 (a) Approval of an agreement between City Front Square LLC and the City of San José for the Office of Cultural Affairs to administer the public art projects for the Block 8 development, for a total amount not to exceed \$273,500 as follows: \$136,000 for Phase One, and \$137,500 for Phase Two of the public art projects;

(b) Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:

(1) Establish an appropriation to the Office of Economic Development for the Public Art in Private Development Project in the amount of \$136,000.

(2) Increase the estimate for earned revenue by \$136,000.

CEQA: Not a Project. Council District 3. (Economic Development/City Manager's Office)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko and Budget Director Larry Lisenbee, dated January 3, 2007, recommending approval of the agreement and adoption of appropriation ordinance and funding sources resolution amendments.

Council Member Liccardo requested Staff to encourage local artists for City projects.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, the agreement was approved and [Ordinance No. 27964](#) and [Resolution No. 73604](#) were adopted. (9-0.)

- 2.7 Approval of a grant agreement between the City of San José and ZeroOne - the Art and Technology Network to support transitional planning costs for *ZeroOne San José: A Global Festival of Art on the Edge*, to be conducted in June 2008 in San José, in a total amount not to exceed \$100,000. CEQA: Resolution No. 72767. Council District 3. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated January 3, 2007, recommending approval of the grant agreement.

Council Member Liccardo expressed concern about the lack of a competitive bid process for use of TOT funding and requested that Staff analyze the costs and benefits.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the grant agreement was approved. (9-0.)

- 2.8 Adoption of a resolution authorizing the Office of Economic Development to direct the Office of Economic Development to develop, produce and conduct the Inaugural San José King-Of-The-Mountain Ride on City streets on February 17, 2007, as a City event. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated January 11, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73605](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Office of Economic Development to Develop, Produce and Conduct the Inaugural San José King of the Mountain Ride on City Streets on February 17, 2007 as a City Event", was adopted. (9-0.)

- 2.9 Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2006-2007 #14 and authorization for the Director of Finance to execute the purchase orders. CEQA: See Administration's Memorandum to Council for specific CEQA clearance determinations on each recommended action. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated January 3, 2007, recommending approval of the open purchase orders.

Action: FY 2006-2007 #14 open purchase orders were approved. (9-0.)

- 2.10 Authorize the Director of Finance to execute:**
- (a) A purchase order for 39 satellite phones and accessories from Remote Satellite Systems International, Inc., in the amount of \$210,423.76, including initial set-up, training, desktop set installation assistance, sales tax and shipping; and
 - (b) Purchase orders for additional satellite phones and accessories as may be required for a period of 2 years, subject to appropriation of funds.
- CEQA: Not a Project. (Finance/Emergency Services)**

2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated January 3, 2007, recommending execution of purchase orders.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the execution of the purchase orders were approved. (9-0.)

2.11 Approval of the third amendment to the agreement for consulting services between the City of San José and Langham Consulting Services, Inc., for Quality Assurance services for the Integrated Billing System (IBS) through the end of Phases 1.1, 1.2 and 2.1, plus continued additional services related to developing a strategy for improving Customer Call Center performance, extending the term of the agreement from November 30, 2006 to September 30, 2007 and increasing total compensation by \$126,000 to a not-to-exceed amount of \$315,000. CEQA: Not a Project. (Finance/Information Technology)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated January 3, 2007, recommending approval of the third amendment to the agreement.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the third amendment to the agreement was approved. (9-0.)

2.12 Adoption of a resolution authorizing a refund of construction loan interest in the amount of \$16,917 to Ketzal Community Development Corporation (KETZAL), borrower for the Las Mariposas for-sale Affordable Housing Project located at 2177 Alum Rock Avenue, San José. CEQA: Negative Declaration, PDC 99-12-096. Council District 5. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated January 3, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73606](#), entitled: "A Resolution of the Council of the City of San José Approving a Refund of Construction Loan Interest in the Amount of \$16,917.00 to Ketzal Community Development Corporation Related to the Las Mariposas For Sale Affordable Housing Project", was adopted. (9-0.)

2.13 Adoption of a resolution authorizing the City Manager to execute an agreement with Clifton Gunderson to maintain the fiscal integrity of the City of San José's Municipal Health Services Program and ensure compliance with federal legislation and regulations of the Centers for Medicare and Medicaid Services, for a term from January 23, 2007 to June 30, 2007 in an amount not to exceed \$107,126. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated January 3, 2007, recommending adoption of a resolution.

2.13 (Cont'd.)

Action: [Resolution No. 73607](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with Clifton Gunderson LLP for Certification of the Municipal Health Services Program (MHSP) Clinic Cost Reports for Fiscal year 2006-2007 in a Total Amount Not To Exceed \$107,126", was adopted. (9-0.)

2.14 **Adoption of a resolution authorizing the City Manager to negotiate and execute a cost-sharing agreement with the Santa Clara Valley Water District (SCVWD) for preparation of a Geotechnical Investigation Report to define underlying soil conditions enabling the City to design the TRAIL: Guadalupe River Reach 6 Project, in the amount of \$35,287, and the SCVWD to define the preferred approach and design of flood management improvements, in the amount of \$71,406 for a total cost sharing agreement not to exceed \$106,693. CEQA: Mitigated Negative Declaration, PP04-03-102. Council Districts 3 and 6. SNI: Washington. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated January 3, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73608](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Cost Sharing Agreement with the Santa Clara Valley Water District for Preparation of a Geotechnical Investigation Report Associated with the Trail: Guadalupe River Trail Reach 6 Project", was adopted. (9-0.)

2.15 **Adoption of a resolution:**

- (a) **Overruling any and all objections to the 2006-2007 Hazardous Vegetation Commencement Report; and**
- (b) **Requesting that the Santa Clara County Department of Agriculture and Resource Management abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.**

CEQA: Exempt, File No. PP06-196. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

Public Comment: Ron Evans complained about being charged for both his property and his neighbor's property. Deputy Director Planning, Building and Code Enforcement Mike Hannon will work with the homeowner.

2.15 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Williams and carried unanimously, [Resolution No. 73609](#), entitled: “A Resolution of the Council of the City of San José Overruling Objections to the 2006-2007 Hazardous Vegetation Commencement Report and Directing the Director of Planning, Building and Code Enforcement to Cause the Santa Clara County Department of Agriculture and Resource Management to Remove the Seasonal and/or Recurrent Weeds and Refuse on Those Properties Identified in the Report”, was adopted. (9-0.)

2.16 Approval of an agreement with Environmental Science Associates to provide a full range of environmental project services for all project phases to ensure compliance with National Environmental Policy Act, California Environmental Quality Act and all related statutes for the period from December 31, 2007 to January 31, 2009, for an amount not to exceed \$202,314, contingent on available grant funding. CEQA: Not a Project. (Police)

Documents Filed: Memorandum from Police Chief Robert Davis, dated January 3, 2007, recommending approval of the agreement.

Police Lieutenant Gary Kirby responded to Council questions.

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Cortese and carried unanimously, the agreement was approved. (9-0.)

2.17 Approval of Contract Change Order Number 9 for a credit in the amount of \$628,429.64 with Desilva Gates Construction for the Norman Y. Mineta San José International Airport North Concourse Building Site Preparation and Excavation (Package 1). CEQA: Resolution Nos. 67380 and 71451, PP04-03-092. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated January 3, 2007, recommending approval of the contract change order number 9.

Action: The contract change order number 9 was approved. (9-0.)

END OF CONSENT CALENDAR

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of January 23, 2007:

A. Authority to Pursue Rehearing and/or Rehearing “En Banc” by the Ninth Circuit:

Case Name: Fisher, et al. v. City of San José, et al.

Adverse Party or parties: Steven Fisher and Sandra Fisher

Substance of Litigation: Alleged civil rights violations resulting from the arrest of Steven Fisher.

Council Vote: Ayes: Campos, Chirco, Constant, Liccardo, Nguyen, Pyle, Williams; Reed.

Noes: None.

Disqualified: None.

Absent: Cortese.

Vacant: Districts 4 and 6.

STRATEGIC SUPPORT SERVICES

3.1 Approval of Study Session minutes:

- (a) Council Study Session on Telecommunications Policy Priorities and AT&T's Project Lightspeed minutes of May 11, 2006
- (b) 2006-2007 Proposed Operating Budget Study Sessions minutes of May 8, 2006 – May 19, 2006

Action: Deferred to January 30, 2007 per the City Clerk.

3.2 Report of the Rules and Open Government Committee – January 10, 2007 Mayor Reed, Chair

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review January 23, 2007 Draft City Council Agenda
 - (a) Adds to the January 23, 2007 Draft City Council Agenda
 - (2) Add New Items to January 16, 2007 Agenda
 - None, meeting canceled
 - (3) List of Reports Outstanding
- (c) Legislative Update
 - (1) State
 - (a) Approval of City-Sponsored Legislation-Customer Facility Charges
 - See Item 3.7 for Council Action taken.
 - (2) Federal

**3.2 Report of the Rules and Open Government Committee – January 10, 2007 (Cont'd.)
Mayor Reed, Chair**

- (d) Meeting Schedules
 - (1) Approve City Council-Santa Clara Valley Water District Board Joint Study Session on Watershed Issues (Environmental Services)
- (e) The Public Record
- (f) Appointments to Boards, Commissions and Committees
- (g) Rules committee Reviews, Recommendations and Approvals
- (h) Review of Significant Public Records Act Requests
- (i) Review of Council Policy Updates per Sunshine Reforms
- (j) Open Forum
- (k) Adjournment

Action: Deferred to January 30, 2007 per Mayor Reed and Orders of the Day.

**3.4 Accept report on cost projections and policy options related to the completion of the Safe Neighborhood Parks and Recreation, the Neighborhood Libraries, and Public Safety bond programs, and provide direction to staff regarding the policy options for addressing unanticipated escalating construction costs. CEQA: Not a Project. (City Manager's Office)
(Deferred from 12/05/06 – Item 3.10)**

Action: Deferred to January 30, 2007.

**3.5 Presentation and discussion of rules and procedures in conducting closed sessions of the City Council. (City Attorney's Office)
(Rules Committee referral 1/10/07)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated January 12, 2007, transmitting an outline of Council "Closed Sessions".

Action: City Attorney Richard Doyle presented the rules and procedures in conducting Closed Sessions of the City Council. No action by the City Council was required. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams and carried unanimously, the report was accepted. (9-0.)

**3.6 Adoption of a resolution in opposition to SB49 (Migden), which would prohibit a local agency or redevelopment agency from providing financial assistance to a sports stadium project that involves the relocation of a professional sports franchise from the territorial jurisdiction of one local agency to another within the same market area, as specified. (Cortese)
(Rules Committee referral 1/10/07)**

Documents Filed: Memorandum from Vice Mayor Cortese and Council Member Constant, dated January 12, 2007, recommending adoption of a resolution.

Public Comment: Ross Signorino spoke in favor of the resolution to oppose SB49. Daniel McCall spoke off topic.

3.6 (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 73610](#), entitled: “A Resolution of the Council of the City of San José Opposing Senate Bill 49”, was adopted. (9-0.)

3.7 **Authorization for the introduction of state legislation repealing the 1999 legislation that authorized the City to collect customer facility charges from Airport rental car customers and instead include San José in the law that currently applies to all other airports in the state except San José, San Francisco and San Diego, with plans to use this revenue for the purpose of funding interim rental car common use busing costs and financing the planned consolidated rental car facility and “a common use transportation system” (such as an on-Airport automated people mover or a bus system) as part of the reconstruction of the Airport. CEQA: Not a Project. (Airport) [Rules Committee referral 1/17/07 – Item 3.2(C)(1)(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated January 23, 2007, transmitting the report from Director of Aviation William Sherry regarding the approval of City sponsored legislation of customer facility charges.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the introduction of state legislation repealing the 1999 legislation that authorized the City to collect customer facility charges from Airport rental car customers and instead include San José in the law that currently applies to all other airports in the state except San José, San Francisco and San Diego, with plans to use this revenue for the purpose of funding interim rental car common use busing costs and financing the planned consolidated rental car facility and “a common use transportation system” (such as an on-Airport automated people mover or a bus system) as part of the reconstruction of the Airport, was approved. (9-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Building Better Transportation Committee – December 4, 2006 Council Member Campos, Chair

Documents Filed: The Building Better Transportation Committee Report dated December 4, 2006.

- (a) Update on Transportation Infrastructure Maintenance Needs Master Plan. Attachment: Memorandum from Director of Transportation Helmer, dated November 22, 2006, transmitting the report.

The Committee accepted the report.

**6.1 Report of the Building Better Transportation Committee – December 4, 2006
Council Member Campos, Chair (Cont'd.)**

- (b) Progress Report on BART to Silicon Valley Project. Attachment: Memorandum from Director of Transportation Helmer, dated November 21, 2006, transmitting the report.

The Committee accepted the report. See Item 6.2 for Council Action taken.

- (c) Final Report on Taxi Program. Attachment: Memorandum from Director of Transportation Helmer, Director of Aviation Sherry and Police Chief Davis dated November 27, 2006, transmitting the report.

The Committee accepted the report. See Item 6.3 for Council Action taken.

- (d) Oral Petitions - None were presented.

- (e) Adjournment - The meeting was adjourned at 3:24 p.m.
(Deferred from 1/9/07 – Item 6.1)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Campos and carried unanimously, the Building Better Transportation Committee Report and the actions of December 4, 2006, were accepted. (9-0.)

6.2 (a) Acceptance of staff's presentation and status report on the BART extension to San José/Silicon Valley.

Documents Filed: Memorandum from Director of Transportation Helmer, dated January 4, 2007, recommending acceptance of the report.

Deputy Director of Transportation Hans Larsen presented an outline of the Progress Report on the BART extension to San José/Silicon Valley and responded to Council questions.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Williams and carried unanimously, the report was accepted. (9-0.)

- (b) **Direction to staff to schedule a Council Study Session on the BART Project for March 2007.**

CEQA: Not a Project. Council Districts 3, 4, 6. SNI: Five Wounds/Brookwood Terrace, University, 13th Street, Burbank/Del Monte, Delmas Park. (Transportation)
[Building Better Transportation Committee referral 12/4/06 – Item (b)]
(Deferred from 1/9/07 – Item 6.4)

Action: To be considered for approval at the 1/24/07 Rules Committee.

- 6.3 Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to the On-Demand Dispatch Services Agreement with Taxi San José, Inc. to eliminate the increase in compensation for the second year of the agreement, retroactive to October 1, 2006. CEQA: Resolution Nos. 67380 and 71451, PP06-212. (Airport/Transportation)**
[Building Better Transportation Committee referral 12/4/06 – Item (c)]
(Deferred from 1/9/07 – Item 6.5)

Documents Filed: Memorandum from Director of Aviation Sherry and Director of Transportation Helmer, dated January 3, 2007, recommending adoption of a resolution.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 73611](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with Taxi San José Inc. to Eliminate the Increase in Compensation for the Second Year of the Agreement, Retroactive to October 1, 2006”, was adopted. (8-0-1. Absent: Constant.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 3:33 p.m. to consider Items 9.1, 9.2, 9.3 and 9.4 in a Joint Session.

- 9.1 Acceptance of the Quarterly Status Report on the Citywide Capital Improvement Program, including Parks, Library, and Public Safety Bond Projects, and Strong Neighborhoods Initiative Projects funded by the City and Redevelopment Agency. CEQA: Not a Project. (City Manager’s Office/Redevelopment Agency)**

Documents Filed: Quarterly Status Report on the Citywide Capital Improvement Program and Strong Neighborhoods Initiative Projects dated January 23, 2007.

Brief Council questions to Staff ensued.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the report was accepted, with Staff requested to provide an information memorandum on Educational Park. (9-0.)

- 9.2 (a) Direction to staff to refine the downtown development policy to set forth height restrictions on new high-rise development to protect existing and future commercial airline service at Norman Y. Mineta San José International Airport.**
(b) Direction to City and Agency staff to initiate amendments to the General Plan and other key policy documents to restrict maximum building heights of new development to elevations, which would not impact airline emergency procedures criteria and are otherwise acceptable to the Federal Aviation Administration (FAA).

- 9.2 (c) Direction to the Administration to consider refinements to the development review process including:**
- (1) For projects subject to an FAA airspace determination, require that applicants have their federal submittals prepared by a licensed civil engineer and that a copy of the submittal be provided to the City; and,**
 - (2) For projects subject to an FAA airspace determination, require that applicants submit to the City a construction survey prepared by a licensed civil engineer verifying project elevations and location coordinates prior to issuance of an occupancy permit; and,**
 - (3) For any proposed modifications or additions to existing buildings that are subject to an FAA airspace determination, such as roof-top accessory structures, require that such proposals be processed as development permit amendments; and,**
 - (4) Conduct outreach with the downtown development community to provide information and guidance on development height restrictions.**
- (d) Direction to the Administration to follow up with the FAA to ensure that its databases are appropriately updated and corrected.**
- (e) Report back to the Council in three years and after evaluating FAA and airline safety procedures and determine if any changes can be made (consistent with FAA procedures) to restore or increase downtown building heights**

CEQA: Resolution No. 72767, File No. PP06-186. (City Manager's Office/Redevelopment Agency)
(Deferred from 12/05/06 – Item 9.1)

Documents Filed: Memorandum from City Manager Les White and Redevelopment Agency Director Harry S. Mavrogenes, dated November 20, 2006, recommending approval of airport obstruction study recommendations for future downtown development.

Action: Dropped per the Administration.

- 9.3 Adoption of a resolution authorizing the Director of Public Works to execute acceptance of an Easement Agreement for a portion of the Guadalupe River Park (GRP) Trail with Sobrato Interests II, Sobrato Interests III and Sobrato Development Company #792 (Sobrato) and authorizing the Director of Public Works to execute all documents necessary to complete the transaction. CEQA: Resolution No. 71373. District 3. (City Manager's Office/Redevelopment Agency)**

Documents Filed: Memorandum from City Manager Les White and Redevelopment Agency Director Harry S. Mavrogenes, dated January 8, 2007, recommending adoption of a resolution.

9.3 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Cortese and carried unanimously, [Resolution No. 73612](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Execute Acceptance of an Easement Agreement for a Portion of the Guadalupe River Park Trail with Sobrato Interests II, Sobrato Interests III and Sobrato Development Co. #792", was adopted. (9-0.)

9.4 (a) Approval of the appointment of Dave Cortese as Vice Mayor. (b) Approval of the appointment of Dave Cortese as Vice Chairperson of the Redevelopment Agency. (Mayor/Redevelopment Agency)

Documents Filed: Memorandum from Mayor Reed, dated January 11, 2007, recommending the appointment of Council Member Cortese as Vice Mayor and Vice Chairperson of the Redevelopment Agency.

Action: Upon motion by Council Member Chirco, seconded by Council Member Liccardo and carried unanimously, the appointments were approved. (9-0.)

The Redevelopment Agency Board portion of the meeting adjourned at 3:53 p.m.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9881	SE terminus of Tierra Enchantia Way	5	Community Housing Developers	12 Units	SFA	Approve

OPEN FORUM

- (1) Ross Signorino expressed opposition to burdening the San José Police Department with enforcing the illegal cutting of trees.
- (2) Robert Apgar voiced personal observations.
- (3) William Garbett complained about the response time from Fire Station 13.
- (4) Mark Trout expressed religious viewpoints.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:02 p.m.

RECESS/RECONVENE

The City Council recessed at 4:02 p.m. from the afternoon Council Session and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chirco, Cortese Constant, Liccardo, Nguyen, Pyle; Reed.

Absent: Council Members - Williams (Excused).

Vacant: - Districts 4 and 6.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle, and carried unanimously, the below noted continuances and actions were taken as indicated. (8-0-1. Absent: Williams.)

NEIGHBORHOOD SERVICES

5.2 As recommended by the Parks and Recreation Commission, name a plaza in the Guadalupe River Park and Gardens as “Rotary Heritage Plaza”. (City Clerk)

Documents Filed: Memorandum from City Clerk Lee Price, dated December 18, 2006, recommending approval of the recommended name Rotary Heritage Plaza.

Public Comment: Jay Ross, Rotary Club of San José, spoke in favor of the recommendation.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, the name Rotary Heritage Plaza was approved. (8-0-1. Absent: Williams.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Piedmont No. 52 on an approximately 1.14 gross acre County Pocket consisting of 3 parcels on the southwesterly side of Old Piedmont Road, approximately 100 feet northwest of Rowley Drive and detachment of the same from the appropriate special districts properties including Central Fire Protection and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459 (Related Rezoning C06-039) (Zoned A-Agricultural upon annexation pursuant to SJMC Section 20.120.310). Council District 4. (Planning, Building and Code Enforcement)

4.2 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Chirco and carried unanimously, the public hearing was closed, and [Resolution No. 73613](#), entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Piedmont No. 52, Subject to Liability for General Indebtedness of the City", was adopted. (8-0-1. Absent: Williams.)

4.3 **Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Story No. 62 on an approximately 0.82 gross acre County Pocket consisting of 2 parcels on the west side of Fleming Avenue 350 feet northerly of Warner Avenue and detachment of the same from the appropriate special districts properties including Central Fire Protection and Area No. 01 (Library Services) County Service (Ramos Family Trust; Gutierrez, Ernesto, Owners). CEQA: Resolution No. 65459 (Related Rezoning C06-079). Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

Action: Upon motion by Council Member Campos, seconded by Council Member Chirco and carried unanimously, the public hearing was closed, and [Resolution No. 73614](#), entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Story No. 62, Subject to Liability for General Indebtedness of the City", was adopted. (8-0-1. Absent: Williams.)

4.4 **Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Monterey Park No. 108 on an approximately 8.58 gross acre area consisting of 9 parcels on both sides of Perrymount Avenue, southwesterly of Stone Avenue and detachment of the same from the appropriate special districts properties including County Lighting County Service, Central Fire Protection, Area No. 01 (Library Services) County Service, and County Sanitation District 2-3 (Numerous Owners). CEQA: Resolution No. 65459 (Related Rezoning C06-048). Council District 7. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution. (2) Letter from the public dated January 23, 2007, regarding the annexation of County pockets.

4.4 (Cont'd.)

Public Comment: Brian Stevenson-Smith, Evelyn Allan and Russ Sheppez expressed concern with imposing franchise fees on the trash service. Director of Planning, Building and Code Enforcement Joe Horwedel clarified that he was working with Environmental Services Department on this issue. Council Member Chirco advised staff to keep the speakers apprised on the issue.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the public hearing was closed, and [Resolution No. 73615](#), entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Monterey Park No. 108, Subject to Liability for General Indebtedness of the City", was adopted. (8-0-1. Absent: Williams.)

4.5 **Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Monterey Park No. 109 on an approximately 4.37 gross acre area consisting of 2 parcels on the Northwesterly corner of Curtner Avenue and Stone Avenue and detachment of the same from the appropriate special districts properties including County Lighting County Service, Central Fire Protection, Area No. 01 (Library Services) County Service, and County Sanitation District 2-3 (Blank, Christine; Owner). CEQA: Resolution No. 65459 (Related Rezoning C06-051). Council District 7. (Planning, Building and Code Enforcement)**

Document Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

Action: Dropped per the Administration.

4.6 **Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Evergreen No. 196 on an approximately 1.13 gross acre County Pocket located on the west side of Kettmann Road, approximately 75 feet southerly of Dashwood Avenue and detachment of the same from the appropriate special districts properties including Central Fire Protection and Area No. 01 (Library Services) County Service (Bic Pho, Owner). CEQA: Resolution No. 65459 (Related Rezoning C06-052). Council District 8. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

4.6 (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Campos and carried unanimously, the public hearing was closed, and [Resolution No. 73616](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Evergreen No. 196, Subject to Liability for General Indebtedness of the City”, was adopted. (8-0-1. Absent: Williams.)

4.7 **Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Evergreen No. 197 on an approximately 1.33 gross acre County Pocket consisting of 2 parcels on the east side of San Felipe Road, 450 feet southerly of Larkspur Canyon Drive and detachment of the same from the appropriate special districts properties including Central Fire Protection and Area No. 01 (Library Services) County Service (Santa Clara Valley Water District; Dias, Lance, Owners). CEQA: Resolution No. 65459 (zoned A-Agricultural upon annexation pursuant to SJMC Section 20.120.310). Council District 8. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

Vice Mayor Cortese pointed out that Staff should be alert to the fact that the property overlaps with the Thompson Creek Master Plan.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Campos and carried unanimously, the public hearing was closed, and [Resolution No. 73617](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Evergreen No. 197, Subject to Liability for General Indebtedness of the City”, was adopted. (8-0-1. Absent: Williams.)

4.8 **Public Hearing and adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Evergreen No. 198 on an approximately 1.57 gross acre County Pocket consisting of 1 parcel on the east side of San Felipe Road, 560 feet northerly of Scenic Meadow Lane and detachment of the same from the appropriate special districts properties including Central Fire Protection and Area No. 01 (Library Services) County Service (Ceraolo R A & A 1998 Trust, Owner). CEQA: Resolution No. 65459 (zoned A-Agricultural upon annexation pursuant to SJMC Section 20.120.310). Council District 8. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution.

Action: Dropped per the Administration.

- 4.9 (a) **Adoption of a resolution initiating proceedings and setting a public hearing on February 27, 2007 at 7:00 p.m. for the reorganization of territory designated as Penitencia No. 74 which involves the annexation to the City of San José of 3.3 gross acres of land consisting of 4 parcels located on the east side of Noble Lane, approximately 200 feet north of Noble Avenue, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service. (Chase, Katheryn and Steven; Medeiros, José; Viswanathan, Tenkasis and Vij; Mancias, Paul; Owners). CEQA: Resolution No. 65459. Council District 4. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk.

Public Comment: Jose Medeiros and Joe Territo spoke in favor of the staff recommendations and encouraged the Council to make sure that the County recognizes the approval of the cottage in the past and that the issue of the old burned down building is addressed.

Director of Planning, Building and Code Enforcement Joe Horwedel responded to Council questions. Mayor Reed encouraged the property owner to speak with staff.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Cortese and carried unanimously, the public hearing was closed, and Resolution No. 73618, entitled: “A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Penitencia No. 74, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization”, was adopted. (8-0-1. Absent: Williams.)

- (b) **Adoption of a resolution initiating proceedings and setting a public hearing on February 27, 2007 at 7:00 p.m. for the reorganization of territory designated as Story No. 60 which involves the annexation to the City of San José of 3.4 gross acres of land consisting of 3 parcels located on the northwest side of Watters Drive, approximately 60 feet northerly of Story Road, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service (Vaughn, Charles; McMullen, Keith and Beverly; Pfeil, Robert; Owners). CEQA: Resolution No. 65459. Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk.

4.9 (b) (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Cortese and carried unanimously, the public hearing was closed, and [Resolution No. 73619](#), entitled: “A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Story No. 60, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization”, was adopted. (8-0-1. Absent: Williams.)

- (c) **Adoption of a resolution initiating proceedings and setting a public hearing on February 27, 2007 at 7:00 p.m. for the reorganization of territory designated as Story No. 61 which involves the annexation to the City of San José of 3.4 gross acres of land consisting of 4 parcels located on the north side of Story Road, approximately 780 feet westerly of Machado Lane, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service (Reyes, Jesus and Maria; Silva, Luis and Barbara; Nguyen, Hoan; Martinez Trust; Owners). CEQA: Resolution No. 65459. Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk.

Action: Dropped per the Administration.

- (d) **Adoption of a resolution initiating proceedings and setting a public hearing on February 27, 2007 at 7:00 p.m. for the reorganization of territory designated as Story No. 63 which involves the annexation to the City of San José of 4.3 gross acres of land consisting of 3 parcels located on the southeast side of Story Lane, approximately 870 feet northeasterly of Clayton Road, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service (Nagashima, Ben and Alice Trustee; Nagashima, Janet; Nguyen, Phuong Mai; Owners). CEQA: Resolution No. 65459. Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk.

4.9 (d) (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Cortese and carried unanimously, the public hearing was closed, and [Resolution No. 73620](#), entitled: “A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Story No. 63, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization”, was adopted. (8-0-1. Absent: Williams.)

PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Liccardo, seconded by Council Member Pyle, and carried unanimously, the Public Hearings on Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-1. Absent: Williams.)

- 11.1 (a) Consideration of a Director initiated prezoning from County of Santa Clara to R-M Multiple Residence Zoning District for multi family residential purposes on an approximate 15.3 gross acre area consisting of 2 parcels on the southwest corner of Capitol Avenue and Hostetter Road (Bianchi, Clara Trustee; Santa Clara Valley Transit Authority, Owners). CEQA: Resolution No. 65459. (Related Annexation Berryessa No. 68). Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (5-0-0-1).
C06-074 - District 4
[Continued from 10/24/06– Item 11.1(g) and 11/14/06 – Item 11.1(c)]**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated November 1, 2006, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C06-074, dated October 5, 2006, recommending approval on the subject property. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated January 18, 2007, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on October 25, 2006, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor.

Action: The recommendation of the Planning Commission and the Planning Director was approved, the public hearing was closed and [Ordinance No. 27965](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Capitol Avenue and Hostetter Road to RM Multiple Residence Zoning District”, was passed for publication, with a correction noted on the staff report to be “southwest” corner of Capitol Avenue. (8-0-1. Absent: Williams.)

- 11.1 (b) **Consideration of an ordinance rezoning the real property located on the east side of Market Street approximately 223 feet north of east San Carlos Street from CG(PD) Planned Development Zoning District to the DC Downtown Primary Commercial Zoning District to allow multiple dwelling residential uses on 0.53 gross acre site (Urban West Michael Kriozere, Owner/Developer). CEQA: Addendum to EIR.**
C06-115 - District 3

Action: Continued to 2/27/07.

- (c) **Consideration of an ordinance rezoning the real property located on the northeast corner of Monterey Road and Phelan Avenue from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow additional commercial uses on a 6.85 gross acre site (1660 Monterey Road) (Caputo Associates, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
PDC06-110 - District 7

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-110, dated January 8, 2007, recommending approval on the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor.

Action: The recommendation of the Planning Director was approved, the public hearing was closed and [Ordinance No. 27966](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northeast Corner of Monterey Road and Phelan Avenue to A(PD) Planned Development Zoning District", was passed for publication. (8-0-1. Absent: Williams.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located on the north side of Blackford Avenue, approximately 200 feet east of Rebecca Way (3801 Blackford Avenue), from the R-M Residential Zoning District to the A(PD) Planned Development Zoning District to allow construction of 20 single-family attached residences on a 0.97 gross acre site (Chui David K Trustee & Et Al, Owner; Leonard Hufton, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning commission recommended approval**

(5-1-0).

PDC06-066 – District 1

(Continued from 12/12/06 – Item 11.2)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 11, 2007, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-066, dated January 11, 2007, recommending approval on the subject property. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated January 18, 2007, transmitting the Planning Commission recommendation of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on November 24, 2006, and submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27967](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Blackford Avenue Approximately 200 Feet East of Rebecca Way (3801 Blackford Avenue) to A(PD) Planned Development Zoning District”, was passed for publication. (8-0-1. Absent: Williams.)

- 11.3 Consideration of an ordinance rezoning the real property located on the southwesterly side of Campbell Avenue, 950 feet northwesterly of Newhall Street (1179 Campbell Avenue), from LI-Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 40 single-family detached residences on a 2.67 gross acre site (Cobalt Associates, Owner). CEQA: Mitigated Negative Declaration.**

PDC06-071 – District 6

(Continued from 12/12/06 – Item 11.5)

11.3 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Chavez, dated December 20, 2006, recommending approval to allow 36 homes with conditions. (2) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated November 30, 2006, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-071, dated November 29, 2007, recommending denial on the subject rezoning. (3) Proof of Publication of Notice of Public Hearing, executed on November 24, 2006, and submitted by the City Clerk.

Action: Dropped to be renoticed per the Administration.

- 11.4 Consideration of an ordinance rezoning the real property located on the terminus of Duckett Way, approximately 420 feet east of S. De Anza Boulevard from R-1-5 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 19 new single family attached residential units and one single family residence on an 1.83 gross acre site (1566 Duckett Way) (P. Lenahan and M. Barshow, Owners; Barry Swenson Builders, Developer). CEQA: Mitigated Negative Declaration. The Director of Planning, Building and Code Enforcement and Planning Commission recommends to not adopt the rezoning ordinance (4-1-2).**

PDC06-062 - District 1

(Continued from 12/5/06 – Item 11.4 and 12/12/06 – Item 11.7)

Action: Continued to February 6, 2007 per the Mayor.

- 11.5 Administrative Hearing on consideration of an appeal of the Planning Commission's decision to deny a Conditional Use Permit to allow the construction of an outdoor dining patio and storage building for an existing restaurant (Tomato Thyme) on a 0.40 gross acre site, in the CN Neighborhood Commercial Zoning District, located on the south side of Hamilton Avenue approximately 320 feet easterly of Meridian Avenue (1560 Hamilton Avenue) (John D. Smith, Owner). CEQA: Mitigated Negative Declaration.**

CP02-008 - District 6

Action: Continued to March 6, 2007.

- 11.6 Administrative Hearing on consideration of an appeal of the Planning Commission's decision to conditionally approve a Wireless-Conditional Use Permit to allow an (existing) monopole and associated ground equipment on a 0.56 gross acre site, in the CG General Commercial Zoning District, located at/on the south side of Tully Road approximately 190 feet northeasterly of Lanai Avenue (1632 Tully Avenue) (Crown Castle, USA, Owner). CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decision to conditionally approve a Conditional Use Permit (File No. CP06-021) permit to allow wireless monopole antenna facility not to exceed 65 feet in height with associated equipment and to deny a development exception permit (V06-012) requested to allow the subject monopole to be in excess of the zoning ordinance height restrictions.
CP06-021 & V06-012 - District 7**

Documents Filed: (1) Memorandum from Council Member Nguyen and Vice Mayor Cortese, recommending approval of the applicant's request with conditions as defined below in "Action". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File Nos. CP06-021 and V06-012, dated September 12, 2006, recommending approval of CP06-021 and denial of V06-012. (3) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 3, 2007, recommending upholding the Planning Commission's decisions to conditionally approve a Conditional Use Permit (CP06-021) and deny a development exception permit (V06-012) requested to all the subject monopole to be in excess of the zoning ordinance height restrictions. (4) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk. (5) Letter from T-Mobile, dated January 16, 2007, regarding the appeal of the Planning Commission's decision.

Senior Planner, Building, Planning and Code Enforcement, Lee Butler presented the staff report.

Public Comment: Mayor Reed opened the public hearing. Matthew Yergovich, representing Crown Castle, the Appellant, spoke in favor of the appeal of the Conditional Use Permit.

Motion: Council Member Nguyen moved approval of the memorandum she cosigned with Vice Mayor Cortese, dated January 19, 2007, recommending upholding the appeal and approve the applicant's request with conditions as outlined in "Action" below. Council Member Liccardo seconded the motion.

Council Member Campos stated the antenna creates a safety issue and opposed the appeal.

11.6 (Cont'd.)

Action: On a call for the question, the motion carried, the public hearing was closed, the appeal was upheld, [Resolution No. 73621](#) was adopted, the memorandum from Council Member Nguyen and Vice Mayor Cortese, dated January 19, 2007, was approved, with the following conditions: (1) Applicant will remove the wagon wheel configuration that currently exists and will flush mount existing and proposed antennas. (2) Applicant will remove existing climbing pegs and existing barb wire fencing that surrounds the monopole to ensure safety. (3) Applicant will “slimline” and paint the monopole and antennas a light gray color to camouflage and minimize visibility. (8-1-1. Noes: Campos. Absent: Williams.)

OPEN FORUM

Documents Filed: Letter from David Wall, dated January 23, 2007, regarding ESD and Human Resources.

- (1) Jose Medeiros issued a complaint regarding his Workman’s Compensation claim. The matter was referred to the City Manager.
- (2) Joe Territo and Robert Long, weed abatement contractors, asked the Council to push back the weed abatement period to April 15, 2007, consistent with the County.
- (3) David Wall summarized concerns expressed in a letter to the Council about a Senior Environmental Inspector in the Environmental Services Department.
- (4) Robert Apgar expressed personal points of view.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:00 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/1-23-07MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at www.sanjoseca.gov/clerk/MeetingArchive.asp